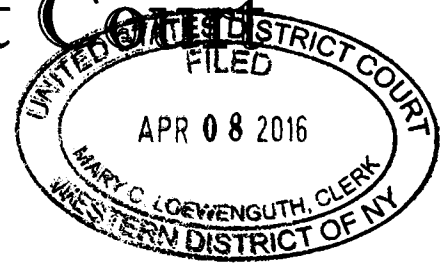


United States District Court

for the
Western District of New York



United States of America

v.

Case No. 16-M-56
(SEALED)

Joshua Zak

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of September 11, 2015, in the County of Erie, in the Western District of New York, the defendant violated Title 18 U.S.C. Section 2252A(a)(5)(B), such offense described as follows:

- 1) The defendant did knowingly possess material which contained images of child pornography, as defined in Title 18, United States Code, Section 2256(8) that have been shipped or transported using any means and facility of interstate and foreign commerce, that have been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, or that were produced using materials that had been mailed or shipped or transported in and affecting interstate and foreign commerce by any means, including by computer.

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

Complainant's signature

RANDALL E. GARVER
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Printed name and title

Sworn to before me and signed in my presence.

Date: April 8, 2016

Judge's signature

City and State: Buffalo, New York

HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

Printed name and title

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Randall E. Garver, being duly sworn, depose and state:

INTRODUCTION

1. I am a Special Agent of the Federal Bureau of Investigation and entered on duty in May 2006. I am currently assigned to the Buffalo Field Office and work on cases associated with the Violent Crimes Against Children program, which targets individuals involved in the online sexual exploitation of children. As part of these duties, I have become involved in the investigation of suspected violations of Title 18, United States Code, Sections 2251, 2252, 2252A, 2422, and 2423. I have also participated in various FBI mandated and volunteer training for the investigation and enforcement of federal child pornography laws in which computers are used as the means for receiving, transmitting, and storing child pornography.

2. I make this affidavit in support of a criminal complaint charging **JOSHUA ZAK** ("ZAK"), with violations of Title 18, United States Code, Section 2252A(a)(5)(B) [knowing possession of child pornography that has been mailed, or, using any means or facility of interstate or foreign commerce, been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer].

3. The statements contained in this affidavit are based on my involvement in this investigation, as well as information provided to me by other law enforcement officers in this investigation, and upon my training and experience as a Special Agent of the FBI.

Because this affidavit is being submitted for the limited purpose of seeking a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that ZAK knowingly violated Title 18, United States Code, Sections 2252A(a)(5)(B).

4. On September 8, 2015, a federal search warrant was issued for the defendant's residence in Buffalo, New York, in the Western District of New York, based on probable cause to believe ZAK had committed violations of Title 18 USC Section 2252A. On September 11, 2015, law enforcement from the Buffalo Division of the FBI conducted a search of the defendant's residence, 124 Saint Mary's Road, Buffalo, New York, pursuant to the search warrant. Among other digital media, law enforcement seized a Hewlett Packard Pavilion desk top computer from an upstairs room labeled "Room I" by the law enforcement search team.

5. Coincident to the search, law enforcement conducted a non-custodial interview of ZAK. When asked why law enforcement was searching his home, ZAK said it must be due to his online pornography, and added it was either "jail bait" or "something younger." I know the term "jail bait" to refer to teen aged girls. ZAK advised that there would be child pornography present on his personal computer (the Hewlett Packard Pavilion desk top computer located in "Room I"), the youngest image of which was about 10 years old. ZAK said he downloaded a lot of child pornography to his hard drives. He told interviewing officers that he used pornography, to include child pornography, as an escape. In fact, ZAK admitted that he got bored with other pornography so he then sought

child pornography. At the conclusion of the interview, ZAK signed a statement that admitted he possessed child pornography.

6. In March 2016, I obtained the results of the forensic exam conducted by the Western New York Regional Computer Forensics Laboratory. The results showed that child pornography was present on various pieces of seized evidence, to include the Hewlett Packard desktop computer mentioned above. I reviewed the forensic findings regarding the desktop computer and found approximately 2,000 images and videos that, in my opinion, constitute child pornography. Listed below are the names and descriptions of 13 of files I reviewed (two of the itemized paragraphs below discuss related images):

1. I viewed a video titled "lucky pen.wmv" that was two minutes and 47 seconds in duration. The video showed a nude prepubescent girl, in my opinion approximately the age of 3, sitting on a white towel against a wall. In the video, the girl used a green pen to masturbate, to include penetrating her vagina. At the 1:12 mark in the video, a man's voice was heard, saying "now pull it in and out...push in, in and out." At the 2:02 mark in the video, the same voice was heard saying, "yeah, does it feel good?" The girl then asked, "up to here, right?" as she pointed toward the pen. At the conclusion of the video the girl smelled the pen.

2. I viewed a video titled "Tara 8yo assfuck choke face cum.wmv" that was seven minutes and 13 seconds in duration. The video showed a nude prepubescent girl, in my opinion approximately the age of 8, bent over a bed facing toward the camera as an adult male engaged in intercourse with the girl from behind. Later in the video the girl laid on the bed facing away from the camera while the same man anally raped the girl. Later in the video, the girl was penetrated digitally by the male before the girl performed oral sex on the man. The video ended with the man ejaculating on the girl's face as he stated, "on your fucking face."

3. I viewed a picture titled "PICT2310.jpg" which depicted a girl, in my opinion approximately the age of two, wearing a pink shirt with her arms extended and hands together to block her face. Another individual is holding her diaper open exposing the girl's vagina.

4. I viewed a picture titled "1-14_cam_n_cum20.JPG" which depicted a nude prepubescent girl, in my opinion approximately the age of nine, with her legs spread, exposing her vagina. A black cat was sitting with its face near the girl's exposed vagina. The girl's face was not visible in the picture.

5. I viewed a picture titled "1186023964081.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age of six, with her legs open exposing her vagina. The girl was holding a sex toy on her vagina as an adult finger was penetrating her vagina. The girl was wearing a striped shirt in the picture and her face was not visible.

6. I viewed a picture titled "mar32044.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age of eight, facing away from the camera and bending over, exposing her vagina. The girl's face was visible looking under her legs toward the camera and her anus was covered in feces.

7. I viewed a picture titled "mar33050.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age eight, laying nude on a bed with her head over the edge. The girl was facing away from the camera and performing oral sex on an adult male. The girl was wearing an orange wristband on her right hand and there was a red sex toy on the bed as well. Related to the photograph was "mar33052.jpg" which, in my opinion, depicted the same nude girl inside an animal's cage. The girl was faced toward the camera and crying.

8. I viewed a picture titled "pict1435.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age of eight, tied to a chair with white rope. An adult finger was penetrating the girl's vagina. The girl's face was not visible in the picture and she was wearing a purple and silver wristwatch.

9. I viewed a picture titled "mar32050.jpg" which depicted an adult male with his pants and underwear around his ankles. The picture only showed the male's buttocks and lower back. There was a prepubescent girl in the picture, in my opinion approximately the age of six, wearing only underwear. The girl's face was pressed into the man's buttocks near his anus.

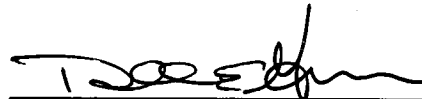
10. I viewed a picture titled "mar32058.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age of six, with her legs spread exposing her vagina. The girl was sitting on top of an adult male who was anally penetrating her with his penis. Neither the girl's nor the man's face was exposed in the picture.

11. I also viewed a picture, "mar31016.jpg" which depicted a nude prepubescent girl, in my opinion approximately the age of six, on her knees with her hands bound behind her back. A related image, "mar32047.jpg" showed the same girl laying face down on a bed being whipped.

7. The hard drive inside of the Hewlett Packard desktop computer owned by ZAK was manufactured outside of New York State.

CONCLUSION

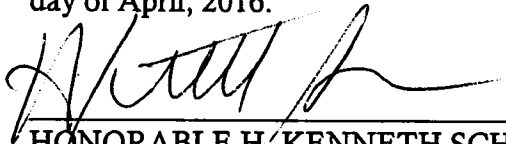
8. Based upon the foregoing, I respectfully submit that I have probable cause to believe that JOSHUA ZAK, has violated Title 18, United States Code, Section 2252A(a)(5)(B) [knowing possession of child pornography that has been mailed, or, using any means or facility of interstate or foreign commerce, been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer].



Randall E. Garver, Special Agent
Federal Bureau of Investigation

Sworn to before me this 8th

day of April, 2016.



HONORABLE H. KENNETH SCHROEDER, JR.
United States Magistrate Judge